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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RACHEL GASSO, on behalf of herself and all consumers similarly situated, Plaintiffs, v. ALLSTAR MARKETING GROUP, INC., ALLSTAR MARKETING GROUP, LLC, ALLSTAR MARKETING CORP., and DOES 1-25, inclusive, Defendants.	Case No.: 07 CV 2235 BTM (BLM) **JOINT MOTION FOR ORDER REMANDING ACTION TO STATE COURT** [No hearing required]

TO THE COURT:

All of the parties hereto, through their respective counsel, jointly move for an Order remanding the above-captioned action to state court, based on the following stipulated facts:

1. On or about October 17, 2007, Plaintiff Rachel Gasso, on behalf of herself and consumers similarly situated (together, "Plaintiffs"), filed an action in the Superior Court of the State of California, County of San Diego, with the caption *Rachel Gasso, on behalf of herself and all consumers similarly situated v. Allstar Marketing Group, Inc., Allstar Marketing Group, LLC, Allstar Marketing Corp., and Does 1-25, inclusive,*

Case No. 37-2007-00057263-CU-BT-NC (hereafter, the "Action"). The Action is a putative class action relating to the advertising and sale of "Auto Cool" products.

2. On or about November 26, 2007, Defendant Allstar Marketing Group, LLC removed the Action to this Court. In its Notice of Removal of Action, Allstar Marketing Group, LLC asserted, among other things, that this Court has original jurisdiction over the Action pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d) ("CAFA"), because this matter is a putative class action in which the amount in controversy exceeds the sum of $5,000,000, exclusive of costs and interest, and is between citizens of different states. Allstar Marketing Group, LLC included evidence with its Notice of Removal of Action that it asserts demonstrates that revenues from nationwide sales of Auto Cool were well in excess of $5,000,000, restitution of which is being sought by Plaintiffs in the Action.

3. On or about December 3, 2007, all of the named Defendants (collectively, "Allstar") filed a Motion to Dismiss Plaintiffs' claims to the extent that they are being asserted on behalf of putative class members who are not residents of California.

4. On or about December 18, 2007, Plaintiffs filed a Motion to Remand the Action to state court. In the Motion to Remand, Plaintiffs asserted, among other things, that they are not seeking to recover damages in excess of $5,000,000, that the "putative Plaintiff Class is limited to aggrieved purchasers of Auto Cool in California," and that they did not intend "the Complaint to encompass all U.S. citizens or seek restitution of all monies paid therefrom."

5. For the sake of judicial efficiency, the parties are now jointly requesting the Court to remand the Action to state court, and to take off calendar the scheduled January 25, 2008 hearing on Allstar's Motion to Dismiss and Plaintiffs' Motion to Remand.

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WHEREFORE, the parties hereby stipulate and agree as follows:

1. Based on certain representations by Defendant, Plaintiffs seek to recover less than $5,000,000 in this Action, exclusive of costs and interests. Any amount awarded in excess of $5,000,000 (if any), will be remitted by Plaintiffs.

2. Plaintiffs will not seek to have any class certified in this Action that includes nonresidents of California.

3. The Action may be remanded to state court.

4. Notwithstanding the foregoing, Plaintiffs reserve the right to file an amended complaint in the Action on or before May 1, 2008. Allstar will not oppose the filing of such an amended complaint (if any), but reserves the right to respond to it in any appropriate fashion. If such an amended complaint is filed, then stipulations 1, 2, and 3 above will become null and void, and Allstar shall have the right to remove the Action to Federal Court based on such amended complaint.

Based on the foregoing, the parties jointly request that the concurrently-submitted [Proposed] Order be entered by the Court.

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Dated: January 10, 2008

LAW OFFICES OF ALEXANDER M. SCHACK

By ______________________
Alexander M. Schack
Attorneys for Plaintiffs

Dated: January 10, 2008

VENABLE LLP

By ______________________
Jeffrey M. Tanzer
Attorneys for Defendants

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 2049 Century Park East, #2100, Los Angeles, California 90067.

On January 10, 2008, I served the foregoing document(s) described as **JOINT MOTION FOR ORDER REMANDING ACTION TO STATE COURT** on the interested parties in this action addressed as follows:

Alexander M. Schack, Esq. — *Attorneys for Plaintiff*
Lee T. Patajo, Esq.
LAW OFFICES OF ALEXANDER M. SCHACK
16870 West Bernardo Drive, Suite 400
San Diego, CA 92127

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☐ **BY PERSONAL SERVICE (CCP §1011)**: I delivered such envelope(s) by hand to the addressee(s) as stated above.

☒ **BY MAIL (CCP §1013(a)&(b))**: I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, #2100 Los Angeles, California, in the ordinary course of business.

Executed on January 10, 2008 at Los Angeles, California

☐ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ **(FEDERAL)** I declare that I am employed in the office of a member of the Bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the above is true and correct.

Jesse Rodriguez

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